

## TITLE IX

### ADMISSIONS AND STIPULATIONS

#### RULE 90. REQUESTS FOR ADMISSION

<sup>1</sup>(a) **Scope and Time of Request:** A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters which are not privileged and are relevant to the subject matter involved in the pending action, but only if such matters are set forth in the request and relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. However, the Court expects the parties to attempt to attain the objectives of such a request through informal consultation or communication before utilizing the procedures provided in this Rule. Requests for admission shall not be commenced, without leave of Court, before the expiration of 30 days after joinder of issue (see Rule 38). Requests for admission shall be completed and any motion to review under paragraph (e) hereof shall be filed, unless otherwise authorized by the Court, no later than 45 days prior to the date set for call of the case from a trial calendar.

<sup>1</sup>(b) **The Request:** The request may, without leave of Court, be served by any party to a pending case. Each matter of which an admission is requested shall be separately set forth. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. The party making the request shall simultaneously serve a copy thereof on the other party, and file the original with proof of service with the Court.

(c) **Response to Request:** Each matter is deemed admitted unless, within 30 days after service of the request or within such shorter or longer time as the Court may allow, the party to whom the request is directed serves upon the requesting party (1) a written answer specifically admitting or denying the matter involved in whole or in part, or asserting that it cannot be truthfully admitted or denied and setting forth in detail the reasons why this is so, or (2) an objection, stating in detail the reasons therefor. The response shall be signed by the party or the party's counsel, and the original thereof, with proof of service on the other party, shall be filed with the Court. A denial shall fairly meet the substance of the requested admission, and, when good faith requires that a party qualify an answer or deny only a part of a matter, such party shall specify so much of it as is true and deny or qualify the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless such party states that such party has made reasonable inquiry and that the information known or readily obtainable by such party is insufficient to enable such party to admit or deny. A party who considers that a matter, of which an admission has been requested, presents a genuine issue for trial may not, on that ground alone, object to the request; such party may, subject to the provisions of paragraph (g) of this Rule, deny the matter or set forth reasons why such party cannot admit or deny it. An objection on the ground of relevance may be noted by any party but it is not to be regarded as just cause for refusal to admit or deny.

(d) **Effect of Signature:** (1) The signature of counsel or a party constitutes a certification that the signer has read the request for admission or response or objection, and that to the best of the

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<sup>1</sup>The amendments are effective as of August 1, 1998.

signer's knowledge, information, and belief formed after a reasonable inquiry, it is (A) consistent with these Rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; (B) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and (C) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation. If a request, response, or objection is not signed, it shall be stricken, unless it is signed promptly after the omission is called to the attention of the party making the request, response, or objection, and a party shall not be obligated to take any action with respect to it until it is signed.

(2) If a certification is made in violation of this Rule, the Court, upon motion or upon its own initiative, may impose upon the person who made the certification, the party on whose behalf the request, response, or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including reasonable counsel's fees.

**(e) Motion to Review:** The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the Court determines that an objection is justified, it shall order that an answer be served. If the Court determines that an answer does not comply with the requirements of this Rule, then it may order either that the matter is admitted or that an amended answer be served. In lieu of any such order, the Court may determine that final disposition of the request shall be made at some later time which may be more appropriate for disposing of the question involved.

**(f) Effect of Admission:** Any matter admitted under this Rule is conclusively established unless the Court on motion permits withdrawal or modification of the admission. Subject to any other orders made in the case by the Court, withdrawal or modification may be permitted when the presentation of the merits of the case will be subserved thereby, and the party who obtained the admission fails to satisfy the Court that the withdrawal or modification will prejudice such party in prosecuting such party's case or defense on the merits. Any admission made by a party under this Rule is for the purpose of the pending action only and is not an admission by such party for any other purpose, nor may it be used against such party in any other proceeding.

**(g) Sanctions:** If any party unjustifiably fails to admit the genuineness of any document or the truth of any matter as requested in accordance with this Rule, the party requesting the admission may apply to the Court for an order imposing such sanction on the other party or the other party's counsel as the Court may find appropriate in the circumstances, including but not limited to the sanctions provided in Title X. The failure to admit may be found unjustifiable unless the Court finds that (1) the request was held objectionable pursuant to this Rule, or (2) the admission sought was of no substantial importance, or (3) the party failing to admit had reasonable ground to doubt the truth of the matter or the genuineness of the document in respect of which the admission was sought, or (4) there was other good reason for failure to admit.

<sup>1</sup>**(h) Other Applicable Rules:** For Rules concerned with frequency and timing of requests for admission in relation to other procedures, supplementation of answers, effect of evasive or incomplete answers or responses, protective orders, and sanctions and enforcement action, see Title X.

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<sup>1</sup>The amendment is effective as of August 1, 1998.

## RULE 91. STIPULATIONS FOR TRIAL

**(a) Stipulations Required:** (1) *General:* The parties are required to stipulate, to the fullest extent to which complete or qualified agreement can or fairly should be reached, all matters not privileged which are relevant to the pending case, regardless of whether such matters involve fact or opinion or the application of law to fact. Included in matters required to be stipulated are all facts, all documents and papers or contents or aspects thereof, and all evidence which fairly should not be in dispute. Where the truth or authenticity of facts or evidence claimed to be relevant by one party is not disputed, an objection on the ground of materiality or relevance may be noted by any other party but is not to be regarded as just cause for refusal to stipulate. The requirement of stipulation applies under this Rule without regard to where the burden of proof may lie with respect to the matters involved. Documents or papers or other exhibits annexed to or filed with the stipulation shall be considered to be part of the stipulation.

(2) *Stipulations to Be Comprehensive:* The fact that any matter may have been obtained through discovery or requests for admission or through any other authorized procedure is not grounds for omitting such matter from the stipulation. Such other procedures should be regarded as aids to stipulation, and matter obtained through them which is within the scope of subparagraph (1), must be set forth comprehensively in the stipulation, in logical order in the context of all other provisions of the stipulation.

<sup>1</sup>**(b) Form:** Stipulations required under this Rule shall be in writing, signed by the parties thereto or by their counsel, and shall observe the requirements of Rule 23 as to form and style of papers, except that the stipulation shall be filed with the Court in duplicate and only one set of exhibits shall be required. Documents or other papers, which are the subject of stipulation in any respect and which the parties intend to place before the Court, shall be annexed to or filed with the stipulation. The stipulation shall be clear and concise. Separate items shall be stated in separate paragraphs, and shall be appropriately lettered or numbered. Exhibits attached to a stipulation shall be numbered serially, i.e., 1, 2, 3, etc. The exhibit number shall be followed by "P" if offered by the petitioner, e.g., 1-P; "R" if offered by the respondent, e.g., 2-R; or "J" if joint, e.g., 3-J.

**(c) Filing:** Executed stipulations prepared pursuant to this Rule, and related exhibits, shall be filed by the parties at or before commencement of the trial of the case, unless the Court in the particular case shall otherwise specify. A stipulation when filed need not be offered formally to be considered in evidence.

**(d) Objections:** Any objection to all or any part of a stipulation should be noted in the stipulation, but the Court will consider any objection to a stipulated matter made at the commencement of the trial or for good cause shown made during the trial.

**(e) Binding Effect:** A stipulation shall be treated, to the extent of its terms, as a conclusive admission by the parties to the stipulation, unless otherwise permitted by the Court or agreed upon by those parties. The Court will not permit a party to a stipulation to qualify, change, or contradict a stipulation in whole or in part, except that it may do so where justice requires. A stipulation and the admissions therein shall be binding and have effect only in the pending case and not for any other purpose, and cannot be used against any of the parties thereto in any other case or proceeding.

**(f) Noncompliance by a Party:** (1) *Motion to Compel Stipulation:* If, after the date of

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<sup>1</sup>The amendment is effective as of August 1, 1998.

issuance of trial notice in a case, a party has refused or failed to confer with an adversary with respect to entering into a stipulation in accordance with this Rule, or a party has refused or failed to make such a stipulation of any matter within the terms of this Rule, the party proposing to stipulate may, at a time not later than 45 days prior to the date set for call of the case from a trial calendar, file a motion with the Court for an order directing the delinquent party to show cause why the matters covered in the motion should not be deemed admitted for the purposes of the case. The motion shall (A) show with particularity and by separately numbered paragraphs each matter which is claimed for stipulation; (B) set forth in express language the specific stipulation which the moving party proposes with respect to each such matter and annex thereto or make available to the Court and the other parties each document or other paper as to which the moving party desires a stipulation; (C) set forth the sources, reasons, and basis for claiming, with respect to each such matter, that it should be stipulated; (D) show that opposing counsel or the other parties have had reasonable access to those sources or basis for stipulation and have been informed of the reasons for stipulation; and (E) show proof of service of a copy of the motion on opposing counsel or the other parties.

(2) *Procedure:* Upon the filing of such a motion, an order to show cause as moved shall be issued forthwith, unless the Court shall direct otherwise. The order to show cause will be served by the Clerk, with a copy thereof sent to the moving party. Within 20 days of the service of the order to show cause, the party to whom the order is directed shall file a response with the Court, with proof of service of a copy thereof on opposing counsel or the other parties, showing why the matters set forth in the motion papers should not be deemed admitted for purposes of the pending case. The response shall list each matter involved on which there is no dispute, referring specifically to the numbered paragraphs in the motion to which the admissions relate. Where a matter is disputed only in part, the response shall show the part admitted and the part disputed. Where the responding party is willing to stipulate in whole or in part with respect to any matter in the motion by varying or qualifying a matter in the proposed stipulation, the response shall set forth the variance or qualification and the admission which the responding party is willing to make. Where the response claims that there is a dispute as to any matter in part or in whole, or where the response presents a variance or qualification with respect to any matter in the motion, the response shall show the sources, reasons, and basis on which the responding party relies for that purpose. The Court, where it is found appropriate, may set the order to show cause for a hearing or conference at such time as the Court shall determine.

<sup>1</sup>(3) *Failure of Response:* If no response is filed within the period specified with respect to any matter or portion thereof, or if the response is evasive or not fairly directed to the proposed stipulation or portion thereof, that matter or portion thereof will be deemed stipulated for purposes of the pending case, and an order will be issued accordingly.

(4) *Matters Considered:* Opposing claims of evidence will not be weighed under this Rule unless such evidence is patently incredible. Nor will a genuinely controverted or doubtful issue of fact be determined in advance of trial. The Court will determine whether a genuine dispute exists, or whether in the interests of justice a matter ought not be deemed stipulated.

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<sup>1</sup>The amendment is effective as of August 1, 1998.

## **RULE 92. CASES CONSOLIDATED FOR TRIAL**

With respect to a common matter in cases consolidated for trial, the reference to a "party" in this Title IX or in Title X shall mean any party to any of the consolidated cases involving such common matter.